

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

PACIFIC NEON COMPANY

and

Case 20-CA-32537

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 340,
AFL-CIO

Margaret M. Dietz, Esq., San Francisco,
CA, for the General Counsel
Jennifer L. Lippi, Esq., of *Rediger, McHugh & Hubbert,*
LLP, Sacramento, CA, for the Respondent
Frank Albert, Business Representative,
Sacramento, CA, for the Union

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in Sacramento, California on March 14, 2006. The charge was filed by International Brotherhood of Electrical Workers, Local 340, AFL-CIO (Union) on June 9, 2005, and an amended charge was filed by the Union on August 30, 2005. Thereafter, on August 31, 2005, the Regional Director for Region 20 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging violations by Pacific Neon Company (Respondent) of Section 8(a)(1) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from Counsel for the General Counsel (General Counsel) and counsel for the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent is a California corporation with its office and principal place of business located in Sacramento, California where it is engaged in the manufacture and installation of commercial signage to commercial enterprises. In the course and conduct of its business operations the Respondent annually purchases and receives at its Sacramento, California facility good and services valued in excess of \$50,000 directly from suppliers located outside the

State of California. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

It is admitted, and I find, that The Union is and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act,

III. Alleged Unfair Labor Practices

A. Issues

The principal issue in this proceeding is whether the Respondent has violated Section 8(a)(1) of the Act by engaging in coercive interrogation of its employees.

B. Facts

The Union has represented the Respondent's employees at least for the past 25 years. On May 25, 2005,¹ while prolonged negotiations for a successor contract were continuing, the Respondent withdrew recognition from the Union based on a petition signed by six of the Respondent's twelve unit employees. Accordingly the Respondent took the position that the Union no longer enjoyed majority support and withdrew recognition from the Union. Shortly after withdrawing recognition, the Respondent announced new benefits that the employees would be receiving as a non-union shop. On the evening of June 1, 2005 the Union called a meeting to discuss this turn of events.

Patrick Smith worked for the Respondent from August 2000 until September 14, when he was terminated. He was a sign installer. Smith attended the June 1 union meeting and testified that at the meeting he and other employees signed union authorization cards to be presented to the Board for an election.²

Smith testified that the following afternoon, at work, Respondent's president, John Drury, approached Smith in the shop area. No others were present. Drury asked if Smith had attended the meeting the night before. Smith said yes. Drury asked him, "who was there and what we talked about." Smith did not want to tell him who was there and evaded the question by beginning to tell him what was discussed at the meeting. Then Drury named certain business representatives and asked if they were there. After that short exchange, Smith walked away to punch out for the day. After clocking out he entered the break room. Drury entered the break room and again asked whether Smith had attended the Union meeting and, "who was there, what we talked about." Smith testified that he was "uncomfortable" with the questioning and did not respond. Drury said that if the employees went back to being union, then they would not be receiving the vacation and holidays that the Respondent had announced after withdrawing recognition.³ To Smith's relief, at about this time another employee entered the break room. The conversation ended and Smith left.

¹ All dates or time periods herein are within 2005 unless otherwise noted.

² A Board election was held on October 3, and the Union did not prevail. Apparently the Union filed this petition shortly after the June 1 union meeting.

³ There is no allegation that the Respondent violated the Act by announcing and/or implementing new terms and conditions of employment after withdrawing recognition.

Thomas Gray, Jr. worked for the Respondent about 25 years and left in about December 2005. He was a shop steward at the time the Respondent withdrew recognition. On July 11, as he was going home for the evening. Drury asked to speak with him for a minute in the conference room. No one else was present. Drury asked him if he was still paying union dues, and Gray said yes. Drury asked why he would want to do that because they were now a non-union shop. Gray replied he was still in the Union. Drury had shown his employees a video earlier that day that had been distributed by the International Union. The video included information about the Union's retirement fund, namely, that the fund was being depleted because there were currently not enough union members to keep the retirement trust solvent in the future. Gray and Drury discussed the video, and, according to Gray, Drury said he thought paying union dues was just a waste of money, and that "he would not go back Union and he was going to fight this to the end, he was not going to go back union."⁴ Gray testified that this latter statement took him by surprise, apparently because Drury had not previously expressed his feelings about the Union in such a direct fashion. However, on cross examination, Gray agreed with the suggestion of Respondent's counsel that Drury may have said something to the effect that the majority of the people want to be non-union and wanted to decertify the Union, and he would support and back that effort as long as that's what the majority wanted.

Gray testified that he took notes of his July 11 discussion with Drury and believes he had the notes with him when he gave his affidavits to a Board agent. The affidavits are dated July 14 and July 22. One of his affidavits states, *inter alia*:

He asked me if I was still Union. I said yes. He asked me why I was paying [union dues]...because I am a non-Union shop. He said I do not have to pay dues. I told him I pay dues because I'm a Union member. He said I don't have to pay dues, I was wasting my money. I told him I am still a member. He said I was wasting my money. He said, I'll never go back to the Union, I'll fight it till the end.

John Drury is president of the Respondent. Drury testified that he did have a conversation with Smith about the Union, but did not ask if Smith attended a union meeting or who was present at the meeting. In fact, he was not certain that he even knew about the union meeting at that point. The substance of his conversation with Smith concerned the differences between the old pay plan under the union contract as compared with a new pay plan the Respondent had implemented after withdrawing recognition. Then, shortly thereafter, he had a subsequent conversation with Smith when both he and Smith found themselves in the break room at the same time. According to Drury, this second conversation was simply a continuation of the prior conversation about the differences in the pay plan, as this was a topic of conversation that caused a substantial degree of confusion among the employees.

Regarding his conversation with Gray, Drury testified that he has known Gray for a long time and they are friends. Drury testified that he may have asked Gray whether he was still paying union dues and was "kind of shocked" that Gray was continuing to pay union dues because Gray is a rather frugal individual and, since there was no longer a union in the shop, was not required to continue paying dues. He did not tell Gray that he would not go back to the Union and would fight the Union to the end. Rather, he said that as long as a majority of his employees no longer wanted to be represented by the Union, he would support them and back them all the way.

⁴ According to Gray, he was repeating Drury's remarks "pretty much word for word,"

C. Analysis and Conclusions

Both Smith and Gray impressed me as reliable witnesses with clear recollections of their conversations with Drury. At the time they testified, Smith had been terminated by the Respondent and Gray had voluntarily left. However, their testimony is consistent with their Board affidavits which were given shortly after the events in question when they were both still employed by the Respondent, and the conversations were fresh in their minds. While the Respondent contends that the testimony of both individuals should not be credited, there is no record evidence supporting the Respondent's contention that their testimony is biased or unreliable. Both individuals were subjected to pointed cross-examination and I was impressed with their demeanor and their direct, responsive, and non-evasive answers. Indeed, Gray was admittedly a particularly reluctant witness for the General Counsel. He testified he did not appreciate being subpoenaed by the General Counsel as he was no longer involved in the situation and wanted nothing to do with the matter. This, in my opinion, enforces my conclusion that his testimony was candid and truthful, and that he had no personal agenda or animosity toward Drury.

I find that the interrogation of both Smith and Gray constituted coercive interrogation and was therefore unlawful. Clearly Smith was uncomfortable with the interrogation regarding his and other employees' union activities; further, Drury's inquiries about what was discussed at the union meeting was an unlawful attempt to elicit from Smith information about internal union matters. Gray was pointedly asked whether and why he was continuing to pay union dues, and this put him in the difficult position of justifying his continued union activity to his employer who expressed displeasure with the Union. *Rossmore House*, 269 NLRB 1176, (1984), enf'd. 760 F.2d 1006 (9th Cir. 1985).

Further, I find that as Gray testified on direct examination, Drury told him that "he would not go back Union and he was going to fight this to the end, he was not going to go back union." This took Gray by surprise and is consistent with Gray's affidavit given shortly after the statement was made. Although Gray, on cross examination, testified Drury may have said something to the effect that he would support the majority of employees who no longer wanted the Union, I credit Gray's testimony on direct examination for the reasons set forth above. Accordingly, I find this statement by Drury, made at a time when a union election was pending, was unlawful because it would cause employees to believe that continuing to support the union would be futile and that their efforts in this regard would be purposeless. *Wellstream Corp.*, 313 NLRB 698, 706 (1994).

On the basis of the foregoing, I find that the Respondent has violated Section 8(a)(1) of the Act as alleged.

Conclusions of Law and Recommendations

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(1) of the Act as alleged.

The Remedy

Having found that the Respondent has violated and is violating Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

ORDER⁵

The Respondent, Pacific Neon Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Coercively interrogating employees concerning their union activity and the union activity of other employees.
- (b) Advising employees that it would be futile for them to continue engaging in union activity.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

- (a) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁵ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶ If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing and Order of the National Labor Relations Board."

(b) Within 21 days after service by the Regional Office, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated: May 22, 2006.

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Gerald A. Wacknov
Administrative Law Judge

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APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT interrogate employees about their own union activities or the union activities of other employees by asking them whether they attended union meetings, who was present at the meetings, what was discussed, and whether they were continuing to pay union dues.

WE WILL NOT advise or suggest to employees that it would be futile for them to continue engaging in union activity as such efforts would be useless because we will not accept the union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed them by Section 7 of the Act.

Pacific Neon Company
(Employer)

Dated: _____ By: _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be referred to the Board's office, 901 Market Street, Suite 400, San Francisco, CA. 94103-1735, Phone 415/356-5130.